

Decision 03-10-011 October 2, 2003

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on policies and practices for advanced metering, demand response, and dynamic pricing.

Rulemaking 02-06-001  
(Filed June 6, 2002)

**OPINION AWARDING INTERVENOR COMPENSATION**

This decision awards The Utility Reform Network (TURN) \$86,981 in compensation for its contribution to Decision (D.) 03-03-036 and D.03-06-032. TURN's request for compensation was unopposed.

**1. Background**

The Commission instituted this rulemaking to formulate comprehensive policies that would develop demand flexibility as a resource to enhance electric system reliability, reduce power purchase and individual consumer costs, and protect the environment. The desired outcome was to offer customers a broad spectrum of options and in turn to make their demand-responsive resources available to the electric system. Thus far, the Commission's rulemaking effort has targeted the investor-owned utility (IOU) service territories of respondents Pacific Gas & Electric (PG&E), San Diego Gas & Electric (SDG&E), and Southern California Edison Company (Edison).

The Commission pursued a strategic approach to the orderly development of demand responsiveness capability in the California electricity market, and coordinated this effort with the related efforts of the California Energy Commission (CEC), the California Consumer Power and Conservation Financing

Authority (CPA), and other interested state agencies. In addition, the Commission pursued a collaborative interagency process, using three working groups. The first, Working Group 1 (WG1), is comprised of agency decision makers (assigned Commissioner Michael Peevey, CEC Commissioner Arthur Rosenfeld, and CPA Director Sunne W. McPeak, also known as “the WG1 principals”), and supported by the assigned Administrative Law Judge (ALJ) and advisory staff from the Commission and CEC. The second, Working Group 2 (WG2), is comprised of active parties who are interested in developing demand response programs for large customers (>200 kilowatts in average monthly demand). The third, Working Group 3 (WG3), is comprised of active parties who are interested in developing demand response programs for small commercial and or residential customers.

In this rulemaking the Commission has issued two Phase 1 decisions. The first decision, D.03-03-036, addressed proposals, emanating from WG3, for residential and small commercial customers; the second decision, D.03-06-032, addressed tariff proposals, emanating from WG2, for large customers.

In D.03-03-036, the Commission adopted, with some modifications, a near-consensus proposal to undertake a statewide pricing pilot (SPP) designed to test Time-of-Use and Critical Peak Pricing (CPP) tariffs for a representative sample of residential and small commercial customers on an opt-out basis. The SPP was designed to test the impact of dynamic pricing tariffs on the usage patterns of a small sample of customers randomly selected statewide. In D.03-03-036, the Commission also adopted cost recovery mechanisms for authorized Phase 1 demand response programs, including the SPP. Finally, the Commission provided guidance on tariff design to the staff and parties for making the impacts of usage changes clear to customers participating in the pilot.

In D.03-06-032, the Commission adopted an interagency vision for advancing statewide demand response goals, linked the task of meeting those goals with utility procurement requirements, and adopted an initial set of voluntary tariffs and programs for large customers whose electricity use exceeds 200 kW per month. The decision also set annual megawatt (MW) targets to be met through demand response and included in IOU procurement plans.

The offerings approved for large customers included a statewide CPP tariff, an Hourly Pricing Option (HPO) tariff for customers in the territory of SDG&E, an IOU Demand Bidding Program (DBP), and the Demand Reserves Partnership (DRP) offered under the aegis of the CPA. Further, the decision authorized funding for these programs for 2003 and 2004, capping expected costs at \$33.0 million over the two years.

## **2. Procedural Matters**

Pursuant to Rule 77.7 (f)(6), concerning decisions (such as today's decision) on intervenor compensation requests, the otherwise applicable 30-day period for public review and comment is being waived.

## **3. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. (All statutory citations are to the Pub. Util. Code.) Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference or by a date established by the Commission. The NOI must present information regarding

the nature and extent of the customer's<sup>1</sup> planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility. The first PHC in this matter was held on July 16, 2002, and TURN timely filed its NOI on August 15, 2002. In a ruling dated September 16, 2002, ALJ Carew found TURN eligible for compensation in this proceeding. The same ruling found that TURN had established significant financial hardship by reliance on a prior finding of significant financial hardship made in a ruling issued on December 19, 2001, in A.01-09-003.<sup>2</sup>

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804 (c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. TURN timely filed its request for an award of compensation on August 5, 2003. Under § 1804 (c), an intervenor requesting compensation must provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.”

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. Pursuant to § 1806, the level of compensation

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<sup>1</sup> To be eligible for compensation, an intervenor must be a “customer” as defined by § 1802(b). Today’s decision, like the statute, uses “intervenor” and “customer” interchangeably.

<sup>2</sup> This proceeding commenced in June 2003, a period within one year of the date of the earlier finding of significant financial hardship, thus a rebuttable presumption financial hardship applies.

must take into account the market rate paid to people with comparable training and experience who offer similar services.

#### **4. Substantial Contribution to Resolution of Issues**

To merit an award of intervenor compensation, TURN must show that it made a “substantial contribution” to D.03-03-036 and D.03-06-032. As defined in § 1802(h), a “substantial contribution” means that:

“in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocates fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.”

Pursuant to § 1802(h), a party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the Commission adopted.

A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party’s position in total.<sup>3</sup>

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<sup>3</sup> The Commission has provided compensation even when the position advanced by the intervenor is rejected. See D.89-03-063 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their

*Footnote continued on next page*

#### **4.1 D.03-03-036**

In response to proposals to adopt demand response programs for residential and small customers, TURN advocated that the Commission consider the costs and benefits of such programs prior to authorizing deployment of demand response programs beyond an initial first test. Specifically, TURN argued that the Commission should have the capability to evaluate demand and elasticity, as well as have the capability to accurately measure program costs and benefits prior to adopting demand response programs.

In D.03-03-036, the Commission relied on TURN's analysis and reasoning. Although D.03-03-036 did not fully adopt TURN's position, the decision reflects in part TURN's position by authorizing a limited SPP to test Time-of-Use and CPP tariffs for a representative sample of residential and small commercial customers. In addition, Conclusions of Law 8, 9, and 14 of D.03-03-036 reflect TURN's position that a need exists for post-pilot evaluation of collected data prior to further program deployment. Conclusion of Law 8 states that Respondent IOUs should file a detailed evaluation plan, Conclusion of Law 9 emphasizes the importance of control groups for ensuring the statistical validity of the pilot results and Conclusion of Law 14 acknowledges the need to evaluate the feasibility of demand programs. Consequently, we find that TURN made a substantial contribution to D.03-03-036.

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arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issue involved).

**4.2 D.03-06-032**

In D.03-06-032, the Commission adopted a Vision Statement and certain tariffs and programs for large commercial customers. In this rulemaking as indicated above, the Commission departed from traditional hearing procedures and instead used a model whereby three working groups representing different groups (decision makers, parties interested in large customer issues, and parties interested in residential and small commercial issues) attempted to resolve disputes and craft solutions. TURN made a substantial contribution by participating in WG1 meetings concerning the development of a Vision Statement. TURN advocated that the Vision Statement should not prejudice outcomes prior to the development of a record or evaluation of pilot tests. The Commission agreed in principle with TURN's position and stated that the Vision Statement should be an evolving document.

TURN also raised concerns about the impact on residential tariffs and programs for large customers. TURN argued that revenue shortfalls from programs designed for large customers should not be borne by residential customers. In addition, although the Commission rejected TURN's position that tariffs and programs for large customers be mandatory, TURN's efforts resulted in the Commission pursuing a more cautious approach. We find that TURN's participation played a key role in assisting our analysis.

## 5. Reasonableness of Requested Compensation

### 5.1 Intervenor Claim

TURN requests compensation of \$86,981 as follows:

<b><u>Professional Fees</u></b>		<b><u>Costs</u></b>
Marcel Hawiger	40.25 hours X \$200/hour	=\$ 8,050
	9.5 hours X \$100/hour	=\$ 950
Michel Florio	1.5 hours X \$385/hour	=\$ 578
Robert Finkelstein	1.75 hours X \$340/hour	=\$ 595
Sara Myers	87 hours X \$325/hour	=\$28,275
	8 hours X \$162.50/hour	=\$ 1,300
<b><u>Total</u></b>		<b><u>=\$39,748</u></b>

<b><u>Expert</u></b>		<b><u>Costs</u></b>
William B. Marcus		
2002	16.66 hours X \$175/hour	=\$ 2,916
2003	3.67 hours X \$185/hour	=\$ 679
Greg Ruzsovan	0.8 hours X \$115/hour	=\$ 92
Jeffrey Nahigian		
2002	236.25 hours X \$115/hour	=\$27,169
2003	125 hours X \$125/hour	=\$15,625
<b><u>Total</u></b>		<b><u>=\$46,481</u></b>

<b><u>Miscellaneous Costs</u></b>		
Photocopying		=\$ 412
Postage		=\$ 19
FedEx, fax and phone		=\$ 12
JBS Energy Consulting		=\$ 309
<b><u>Total</u></b>		<b><u>=\$ 752</u></b>
<b><u>Grand Total</u></b>		<b><u>= \$86,981</u></b>



## **5.2 Overall Benefits of Participation**

In D.98-04-059, the Commission adopted a requirement that a customer demonstrate its participation was “productive,” as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program administration. (See D.98-04-059, *mimeo.* at 31-33, and Finding of Fact 42). In that decision we discuss the requirement that participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

TURN argues that in this proceeding the issues raised involved either policy issues or complex design issues for the SPP pilot and the optional CPP tariffs for large customers. Consequently, TURN concludes that it is impossible to monetize the benefits of TURN’s participation. We agree that it is difficult to assign a reasonable dollar value to the benefits from TURN’s participation due to the type of issues raised. However, based on the potential benefits to enhance electric system reliability, reduce power purchase and individual consumer costs, and protect the environment, we believe that ratepayers will benefit from TURN’s participation in the development of comprehensive policies designed to promote demand flexibility as a resource. Consequently, we find TURN’s participation productive.

## **5.3 Hours Claimed**

TURN has presented its attorney and professional consultant hourly records in an appendix to the request for compensation. The information reflects the hours devoted to such tasks as evaluating proposals, reviewing working

group reports, drafting comments, and participating in working group meetings and workshops. Consistent with Commission policy, TURN billed half of its attorney rate for time related to preparation of this compensation request and for travel time.

The hourly breakdowns reasonably support the hours claimed by TURN. The hours TURN claims are reasonable given that this proceeding involved expedited treatment of complex issues and included multiple workshops and three working groups.

#### **5.4 Hourly Rates**

The Commission has previously approved an hourly rate of \$200 for Marcel Hawiger for 2002. (*See* D.02-09-040.) Given the limited hours expended by Hawiger in 2003, TURN has chosen to apply Hawiger's 2002 hourly rate for work he performed in 2003. Robert Finkelstein is an experienced supervising attorney, and the \$340 rate requested has previously been approved for work in the year 2002. (*See* D.02-09-040.) Because of the small number of hours spent in 2003, TURN asserts that it is appropriate to apply the 2002 rate to his work on this matter in 2003. The Commission has also previously adopted an hourly rate of \$385 for Michel Florio for 2002. (*See* D.02-09-040.) We find these requested rates are reasonable.

TURN requests that the Commission establish a new hourly rate of \$325 for its outside attorney, Sara Myers, for work she performed in 2002 and 2003. TURN states that the Commission last approved an hourly rate of \$235 for Myers for both 1995 and 1996, and that the requested \$90 rate increase represents a 6% annual increase. Further, TURN argues that an hourly rate of \$325 is appropriate given Myers' qualifications and experience. TURN states that Myers has been an attorney for 28 years and has spent nearly all of this time in the field

of public utility regulation. Myers' experience also includes 14 years employment as an attorney and ALJ at this Commission. Lastly, TURN argues that an hourly rate of \$325 is consistent with market rates for California attorneys with similar experience and qualifications. TURN characterizes Myers' experience as similar to a partner in a private law firm and also cites the most recent "Of Counsel" survey for 2002-2003 as showing hourly rates for partners in California law firms in major cities as ranging between \$295 and \$550.

We find that Myers' broad range of experience concerning public utilities regulation and length of time as a practitioner (in government and in the private sector) in the area of public utility regulation supports the hourly rate requested by TURN. An hourly rate of \$325 for Myers is reasonable and reflects market rates for an individual of possessing similar experience and qualifications.

Concerning its consultants' hourly rates for 2002, the Commission has previously approved an hourly rate of \$115 for Nahigian (D.02-11-017), an hourly rate of \$175 for Marcus (D.02-11-020), and an hourly rate of \$115 for Ruszovan (D.03-04-011).

For 2003, TURN requests that the Commission approve new hourly rates of \$125 for Nahigian and \$185 for Marcus. TURN asserts that the requested increases represent a reasonable compensation level for consulting services of professional economists. In support of its request, TURN cites similar and higher hourly rates (\$173 to \$240) paid other expert witnesses appearing in other Commission proceedings. TURN also provides detailed information concerning the education and experience of Marcus and Nahigian. We find the requested rates for 2003 reflect market rates for individuals of similar experience and

qualifications and are reasonable given the education and experience of Nahigian and Marcus.

### **5.5 Other Costs**

TURN requests \$752 for other costs (photocopying, postage, fax, and telephone). TURN has itemized these costs by date, amount and activity. Based on the scope of TURN's work, these costs are reasonable.

### **6. Award**

We award TURN \$86,981, calculated as described above. Responsibility for payment should be borne by respondents PG&E, SDG&E and Edison because all three utilities had an interest in this proceeding. Since the three utilities differ greatly in size, we will allocate their share based on the relationship of their respective 2002 California electric revenues. Consistent with previous Commission decisions, we will order that interest be paid on the award amount at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, H.15, with interest commencing the 75th day (October 19, 2003) after TURN filed this compensation request and continuing until the utilities makes full payment.

As in all intervenor compensation decisions, we put TURN on notice that the Commission staff may audit TURN's records related to this award. Thus, TURN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. TURN's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

## **7. Waiver of Comment Period**

This is a compensation matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(3), the otherwise applicable 30-day review and comment period is being waived.

## **8. Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner and Lynn T. Carew and Joseph DeUlloa are the assigned ALJs in this proceeding.

## **Findings of Fact**

1. TURN has made a timely request for compensation for its contribution to D.03-03-036 and D.03-06-032.
2. TURN has previously made a showing of significant financial hardship and has been found eligible for compensation in this proceeding by ruling dated September 16, 2002.
3. TURN has contributed substantially to D.03-03-036 and D.03-06-032.
4. TURN has requested hourly rates for its attorneys, Hawiger and Finkelstein, that have already been approved by the Commission in previous decisions.
5. An hourly rate of \$325 for 2002 and 2003 for TURN's attorney Myers is reasonable and consistent with market rates for California attorneys with similar experience and qualifications
6. TURN has requested hourly rates for 2002 for its consultants of \$115 for Nahigian, \$175 for Marcus, and \$115 for Ruszovan that have already been approved by the Commission in previous decisions.
7. Hourly rates for 2003 of \$125 for Nahigian and \$185 for Marcus are reasonable and consistent with market rates for consulting services of professional economists with similar experience and qualifications.

8. TURN's hourly breakdowns and allocation of time spent on different activities reasonably supports the claimed hours for TURN.

9. TURN's cost of participation was productive in relation to the overall results reached in D.03-03-036 and D.03-06-032.

10. The miscellaneous costs incurred by TURN are reasonable in relation to its overall costs of participation.

### **Conclusions of Law**

1. TURN has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

2. TURN should be awarded \$86,981 for its substantial contribution to D.03-03-036 and D.03-06-032.

3. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

4. This order should be effective today so that TURN may be compensated without unnecessary delay.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Utility Reform Network (TURN) is awarded \$86,981 in compensation for its substantial contribution to Decision (D.) 03-03-036 and D.03-06-032.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall each pay TURN the respective utility's share of TURN's total award. The shares shall be computed on the basis of each utility's percentage

(measured in kilowatt-hours) of the total retail sales of electricity in 2002 (the year most costs were incurred) for all three utilities. Interest shall be paid on the award amount at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, H-15, with interest commencing October 19, 2003, and continuing until the utilities make full payment.

3. The comment period for today's decision is waived.

This order is effective today.

Dated October 2, 2003, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

Commissioners

Commissioner Susan P. Kennedy, being necessarily absent, did not participate.

**Compensation Decision Summary Information**

<b>Compensation Decision:</b>	D03-10-011
<b>Contribution Decision:</b>	D0303036 and D0306032
<b>Proceeding:</b>	R020001
<b>Author:</b>	ALJ DeUlloa
<b>Payers:</b>	Pacific Gas and Electric Company San Diego Gas & Electric Company Southern California Edison Company

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Reason Disallowance</b>
The Utility Reform Network	08/05/2003	\$86,981	\$86,981	—

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Marcel	Hawiger	Attorney	The Utility Reform Network	\$200	2002	\$200
Robert	Finkelstein	Attorney	The Utility Reform Network	\$340	2002	\$340
Michel	Florio	Attorney	The Utility Reform Network	\$385	2002	\$385
Sara	Myers	Attorney	The Utility Reform Network	\$325	2002	\$325
Sara	Myers	Attorney	The Utility Reform Network	\$325	2003	\$325
William	Marcus	Economist	The Utility Reform Network	\$175	2002	\$175
William	Marcus	Economist	The Utility Reform Network	\$185	2003	\$185
Greg	Ruszovan	Economist	The Utility Reform Network	\$115	2002	\$115
Jeff	Nahigian	Economist	The Utility Reform Network	\$115	2002	\$115
Jeff	Nahigian	Economist	The Utility Reform Network	\$125	2003	\$125